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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,932	03/26/2004	Reinhard Bruch	35690-502	6430
64046 7590 06/13/2007 MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C LA JOLLA CENTRE II 9255 TOWNE CENTRE DRIVE, SUITE 600 SAN DIEGO, CA 92121-3039				
			EXAMINER HELLNER, MARK	
			ART UNIT 3663	PAPER NUMBER
			MAIL DATE 06/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/809,932	BRUCH ET AL.	
	Examiner	Art Unit	
	Mark Hellner	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-17 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-17, 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

### **DETAILED ACTION**

The indicated allowability of claims 1, 2, 4 – 17 and 19-26 is withdrawn in view of the newly discovered reference(s) to Chin (7,184,143). Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin (7,184,143).

Chin discloses a device comprising: a femtosecond terawatt laser radiation source (column 3, lines 22-31) configured to emit laser radiation through a sample; an optical unit (M2 and M3) configured to receive light backscattered from the sample; and a detection and analysis unit (PMT and Oscilloscope).

The difference between claim 1 and Chin is the use of an air transient digitizer, UV spectrometer and VIS spectrometer in the detection and analysis unit.

It is noted that Chin teaches detecting the fluorescence of signals generated in the sample.

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UV and VIS spectrometers in combination with an air transient digitizer were well known elements for covering the fluorescence spectrum and, as such, would have been suggested by Chin to the skilled artisan.

The use of fibers to couple signals (claim 2) is conventional.

Claim 4 is taught by title of Chin.

Claim 5 is taught by column 3, lines 25-27.

The subject matter of claims 6 and 7 would have been operational parameters derivable from the pulse characteristics set forth by column 3, lines 27-31.

Claim 8 is taught by column 3, line 29.

Claim 9 is taught by column 2, lines 30-35.

Claim 10 is taught by column 2, line 60.

Claim 11 is taught by column 3, lines 5-7.

Claim 26 is taught by the structure applied to claim 1.

Claims 12-17 and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chin as applied to claims 1, 2, 4-11 and 26 above, and further in view of Patzwald.

The subject matter of claims 12-17 and 19-25 adds the difference that the laser source of Chin operate at 237nm.

Patzwald et al is cited to show that the conventional range for spectrometer detection is 200nm to 2400nm.

As a result, it would have been obvious to have adapted the device of Chin to 237nm when seeking to find molecules that are fluorescent at lower wavelengths.

### ***Drawings***

The drawings are objected to because descriptive legends are required for the box elements of figure 6. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

Mark Hellner

Primary Examiner

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